

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARLOS ARCHULETA,

Plaintiff,

v.

No. CIV 13-0942 LH/RHS

CHAVES COUNTY DETENTION CENTER,

Defendant.

MEMORANDUM OPINION AND ORDER


This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and rule 12(b)(6) of the Federal Rules of Civil Procedure, on Plaintiff's Tort Notice of Claim, construed herein as a civil rights complaint. Plaintiff is incarcerated, appears pro se, and is proceeding in forma pauperis. For reasons set out below, Plaintiff's claims will be dismissed.

The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under § 1915(e)(2) "at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim on which relief may be granted." The Court also may dismiss a complaint *sua sponte* under rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Oklahoma, Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but liberally construes the allegations. *See Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

Plaintiff alleges that he was subjected to unreasonable force and denied a hot meal. The complaint names the Chaves County Detention Center as the only Defendant. The Detention Center may not be sued in this § 1983 action. “[A] detention facility is not a person or legally created entity capable of being sued.” *White v. Utah*, 5 F. App’x 852, 853 (10th Cir. 2001). The Court will dismiss Plaintiff’s claims against this Defendant. If Plaintiff wishes to pursue claims against individual Defendants, he may file an amended complaint naming the individuals who allegedly committed the violations. Failure to comply with this Order may result in dismissal of this action.

IT IS THEREFORE ORDERED that Plaintiff’s claims against the named Defendant Chaves County Detention Center are DISMISSED;

IT IS FURTHER ORDERED that the Clerk is directed to send Plaintiff a § 1983 complaint; and, within twenty-one (21) days from entry of this Order, Plaintiff may file an amended complaint naming individual Defendants who committed the alleged violations.



SENIOR UNITED STATES DISTRICT JUDGE